Pc. Ps. Greg. P.

FILED
NOV 11 1902
JAMES H. McKENNEY,
Clerk.

Answer of Northern Securities Co.

Supreme Court of the United States.

Filed Nov. 11, 1902.

THE STATE OF WASHINGTON,

Complainant,

vs.

NORTHERN SECURITIES COMPANY, a Corporation, Great Northern Railway Company, a Corporation, and Northern Pacific Railway Company, a Corporation,

Defendants.

The answer of the defendant, the Northern Securities Company, to the Bill of Complaint of the State of Washington.

GEO. B. YOUNG, and
JOHN W. GRIGGS,
Solicitors and Counsel for Defendant,
Northern Securities Company.

Supreme Court of the United States.

THE STATE OF WASHINGTON,

Complainant,

vs.

NORTHERN SECURITIES COMPANY, a Corporation, Great Northern Railway Company, a Corporation, and Northern Pacific Railway Company, a Corporation,

Defendants.

The answer of the defendant, the Northern Securities Company, to the Bill of Complaint of the State of Washington.

This defendant, reserving to itself all right of ex

ception to said bill of complaint, for answer thereto, says:

I.

It admits the matters stated in the first and second subdivisions of said bill.

II.

It admits that large quantities of land were granted to the complainant by the acts of Congress mentioned in subdivision III-A of said bill, for the purposes in said acts set forth; but it knows not and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise, whether any, and, if any, what quantity of said granted lands are left or undisposed of, or as to the value, if any, of said lands, or as to the location thereof, or whether much or any of said lands are located in the territory traversed by either of the defendant railway companies, or are vacant or unsettled, or as to what extent, if at all, the value or salability of said lands, or any of them, depends upon competition over the lines of the defendant railway companies, or upon the construction of lines of railway by either of said companies.

It admits that each of said railway companies has heretofore, and as the circumstances of each case warranted, from time to time, built or caused to be built spur or branch lines into territory adjacent to its railway, as well as into new territory; but it denies that such construction has been by reason of rivalry between said companies, or that

the construction of such spur or branch lines has been or will be prevented or lessened or deferred, or in any way affected, by the formation of this defendant. And it denies that the matters, or any of them, alleged in said bill, have prevented or hindered, or will, in the future, prevent or hinder the construction, by the complainant, or by any person or corporation thereto authorized by complainant, of any line or lines of railroad that the complainant may deem necessary or advantageous to bring its lands into market and to secure their settlement and occupation.

And it denies each and every averment in said subdivision III-A in said bill contained not herein expressly admitted.

III.

It admits the complainant's ownership, maintenance and operation of the institutions named in subdivision III-B of said bill, and that some portion of the supplies for some of said institutions requires to be and is in fact carried over the lines of one or the other of the defendant railway companies.

As to the other matters stated in said subdivision III-B, this defendant knows not and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise in respect of said matters or any of them.

IV.

It admits the making of large shipments of wheat and other products, merchandise and timber, from and to the places mentioned in subdivision IV of said bill.

It denies that competition between the defendant railway companies for traffic between said places, or any of them, was, prior to the organization of this defendant, any sharper or more active, or more productive of lower rates for freight or passengers, than it has been at all times since such organization and still is; and denies that such rates have been, at any time since the organization of this defendant, or now are, or will be in the future, any higher than if this defendant had not been formed. On the contrary, it says that since the formation of this defendant such rates have already been largely reduced, and are now, and will continue to be, lower than those stated in the bill to have been secured by the sharp and active competition therein alleged.

V.

It admits the matters stated in subdivision V of said bill, except that it denies that the Great Northern Railway Company is, or ever has been, subject to the constitution, laws, regulations or provisions of the State of Washington, in respect of its internal organization or its interstate or international traffic, or in respect of the right of any person, or any corporation (not being a corporation created by

the State of Washington), to own or hold shares of its capital stock; and denies that the Great Northern Railway Company has ever constructed any lines of railway in the States of Washington or Minnesota except the line from St. Cloud to Hinckley, mentioned in said bill; and denies that it operates the Eastern Railway of Minnesota by virtue of stock ownership, or otherwise than under and by virtue of a lease thereof from its owner, the Eastern Railway Company of Minnesota.

And it denies that Jacob H. Schiff was, on the thirteenth day of November, 1901, or at any time since has been, a director of said Great Northern Railway Company; or that William P. Clough was at the time of the filing of said bill, or at any time since, a director or officer thereof; and denies that James J. Hill mentioned in said bill, was, on November thirteenth, 1901, or that he ever has been, the owner of, or in possession or control of, or had, on said day, or at any time, subject to his direction or disposition, more than a majority or more than a portion far less than a majority, of the capital stock of said Great Northern Railway Company.

VI.

It admits the averments of subdivision VI of said bill.

VII.

It admits the incorporation and existence of the Northern Pacific Railway Company and its opera-

tion of railways in the State of Washington, but denies its subjection to the constitution, laws, regulations or provisions of said State in respect of its internal organization, or the qualification of its shareholders, or the right of any person or corporation (not being a corporation of the State of Washington) to become an owner and holder of shares of its capital stock, or in respect of its interstate or international traffic.

It admits that the powers of that company are delegated to and exercised by a Board of fifteen Directors, and denies that James J. Hill, E. H. Harriman, H. McK. Twombly, Samuel Rae and William Rockefeller, or any of them, were, in the month of April, 1901, members of the Board of Directors of said company; and denies that James J. Hill was a member of said Board at the time of the filing of said bill.

It admits that on the thirteenth day of November, 1901, the total capital stock of the Northern Pacific Railway Company consisted of Eighty Millions of common stock and Seventy-five Millions of preferred stock, the latter of which was subject to retirement as provided by the Articles of Incorporation and the agreement under which the same was issued. It denies that on the thirteenth day of November, 1901, or at any time, J. Pierpont Morgan, mentioned in said bill, or said Morgan and other persons acting with him, owned or had in their possession or held under or subject to their control or disposition, upwards of eighty-five per cent or more than forty-eight per cent of the capital

stock of said Northern Pacific Railway Company, then outstanding.

It admits the insolvency of the Northern Pacific Railroad Company and the appointment of receivers thereof; and the acquisition of its property by the defendant, the Northern Pacific Railway Company.

It admits that the cities and towns in the State of Washington named in subdivision VII of said bill are points on the lines of each of the defendant railway companies; but it denies that the lines of said railway companies between said points were or are parallel, or that said lines competed for freight or passenger traffic between said points in any different manner or to any greater extent, prior to the formation of this defendant, than they have at all times done since the formation of this defendant and will continue to do in the future.

It denies that the lines of the defendant railway companies between the State of Washington and St. Paul and Minneapolis, in the State of Minnesota, were or are parallel to each other, or that they have ever been competing lines, except at a few points, at nearly all of which points they competed and still compete with the lines of other railway companies; and it denies that the defendant railway companies have, at any time, competed with each other for passenger or freight traffic in any other or different manner, or to any greater extent, than they have continuously done since the formation of this defendant and will continue to do in the future.

It admits that the lines of the defendant railway companies are the only lines of any single railway company running East and West entirely across the State of Washington, and the only lines running East and West between Spokane and Seattle; also the only lines of any single railway company traversing, East and West, all the northern tier of states of the United States west of the Mississippi River; but it denies that said lines are the only lines connecting such territory, or territory tributary thereto by rail with the Pacific Ocean.

And it denies each and every statement in subdivision VII of said bill contained not hereinbefore expressly admitted.

VIII.

It admits that in the spring of the year 1901, the Northern Pacific and Great Northern Railway Companies purchased about ninety-eight per cent of the total shares of the capital stock of the Chicago, Burlington and Quincy Railroad Company, and that each of said defendant railway companies thereupon became the owner of and now owns, severally, and in its own sole right, one-half of the shares so purchased, and that said defendant railway companies paid for said shares with their joint bonds, of the description and amount, stated in said bill.

It denies that said bonds were issued by either of said companies in contemplation of placing their lines under a common source of control; and denies that joint ownership or control of the said Chicago,

Burlington & Quincy Railroad Company has ever been vested in or exercised by the said defendant railway companies.

And it denies each averment in said subdivision VIII of said bill contained not hereinbefore expressly admitted.

IX.

It admits that this defendant is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey; that it was organized on the thirteenth day of November, 1901, with its principal office located in the City of Hoboken, State of New Jersey, and that its Articles of Incorporation are as set forth in said bill.

It denies that this defendant was organized for any other purposes than those set forth in its said Articles of Incorporation.

It admits the fact and the date of the retirement of the preferred stock of the Northern Pacific Railway Company, pursuant to a resolution of its Board of Directors, in conformity with the Articles of Incorporation of said company and the agreement under which said preferred stock was originally created and issued, and that such retirement was effected in accordance with said articles and agreement, by paying off said stock at par; and that the funds for such payment were procured by the issue and sale of seventy-five millions of the bonds of said company, convertible—and which have been converted—into an equal amount of the

common stock of said company, and that a preferential right to purchase said bonds was given the common stockholders of said company in proportion to their holdings of such common stock.

It admits that after the formation of this defendant, and on November twenty-second, 1901, this defendant did offer to the shareholders of the Great Northern Railway Company to purchase such of their shares as should be offered within sixty days from that date, at $180 per share, and to pay therefor in shares of its own capital stock at par.

Except as aforesaid, it says that this defendant has not offered or sought to purchase any stock of either of said railway companies in exchange for its own shares.

It says that it has also purchased for cash a large amount of the shares of the defendant railway companies, and of other companies.

It cannot say whether it will at any time acquire all the shares of either of said companies, or how much thereof it will acquire, since such acquisition will depend, among other contingencies, on the willingness of the holders of said shares to sell them on terms which this defendant may be willing to accept.

Except as hereinbefore stated or admitted, it denies each and every matter alleged in subdivision IX of said bill.

X.

It denies each and every allegation of subdivision X of said bill.

XI.

It denies each and every allegation of subdivision XI of said bill.

XII.

It denies each and every allegation of subdivision XII of said bill, except that it admits that upon the transfer to this defendant of any shares in either of the defendant railway companies, the shares so transferred were to and did become the absolute property of this defendant, in its own sole right, and the person making such transfer was to and did thereby cease to be a shareholder of or have any interest in such company by reason of such shares.

XIII.

It admits that its articles of association contain the provisions stated in subdivision XIII of said bill. It denies that there was ever any agreement between said James J. Hill and J. Pierpont Morgan, or between them or either of them and any other person, that the first Board of Directors of this defendant should be named by said J. Pierpont Morgan, or that only such persons shoud be designated members of such Board as were first approved by said James J. Hill; and it denies that said James J. Hill was elected or designated president of this defendant in furtherance of any such plan.

It admits that the first Board of Directors of this defendant was elected on November fifteenth, 1901, and was composed of the persons named in said bill,

and that said Board elected the Executive Officers of the defendant named in said bill; and that James J. Hill and E. T. Nichols were at that date, and now are, respectively, the President and the Secretary of said Great Northern Railway Company.

But it denies that William P. Clough was, at the date of said election, an officer of the Great Northern Railway Company.

It denies that said Board of Directors was designated by J. Pierpont Morgan and James J. Hill, or that their election was a part of the pretended plan and conspiracy, or was had pursuant to the pretended illegal agreement or scheme, alleged in said bill.

It denies that said James J. Hill and his associate directors and officers of this defendant own or control a majority of the capital stock of this defendant, or that this defendant has, at any time, in any manner whatever, dictated the policy or management of either of the defendant railway companies, or has ever directed or managed the business or practice of either of said companies, or determined or enforced freight or passenger rates on any of the lines of either of said companies in the State of Washington, or the manner or means of handling freight or passenger business of either of said companies on either of said lines of railway, or that it has any purpose of so doing.

It admits that it has no agent or representative in the State of Washington on whom any legal process may be served, and that it owns no property of

any nature whatever situated in the State of Washington.

It denies that any of the matters alleged in subdivision XIII of said bill tend to or do create a monopoly in railway traffic in the State of Washington, or elsewhere, or tend to or do deprive said State or its citizens of the privilege of competition in fixing charges or rates of transportation between stations upon the lines of railway of the defendant railway companies within said state.

And it denies each and every averment in said subdivision XIII of said bill contained not hereinbefore expressly admitted.

XIV.

It admits that Sections 14 and 16 of Article XII of the Constitution of Washington are as stated in said bill, but says that what professes to be a statement of section 22 of said Article is garbled and imperfect.

It denies that in the organization of this defendant, the promoters thereof had any of the purposes, objects or designs alleged in said bill, and it denies that this defendant, or either of the defendant railway companies, or their stockholders, directors, executive committee, officers, agents or representatives, have at any time had or now have any of the purposes, intents or designs charged in said subdivision or elsewhere in said bill; and denies that they or any of them have done any of the things alleged in said subdivision; and denies that this

defendant is a carrier or a railroad company, within the meaning of the Constitution or laws of the State of Washington, or of any other state; or that the acts complained of in said bill or any of them violate or evade the laws of the land or the settled public policy or laws of the State of Washington.

This defendant says that it is the owner and holder of a large amount of property and stocks in other corporations than the defendant railway companies.

And it denies each and every matter in subdivision XIV of said bill, except as is hereinbefore admitted.

XV.

It denies each and every matter and thing alleged in said bill not hereinbefore expressly admitted.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged; without this that if there is any other matter, cause or thing in said bill contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed and avoided, traversed or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and

charges in this behalf most wrongfully sustained.

NORTHERN SECURITIES COMPANY,

By GEO. B. YOUNG and
JOHN W. GRIGGS,
Solicitors.

JOHN W. GRIGGS,
GEO. B. YOUNG,
Counsel.